

34A-2-702 Employers' Reinsurance Fund -- Injury causing death -- Burial expenses -- Payments to dependents.

- (1)
 - (a) There is created an Employers' Reinsurance Fund for the purpose of making a payment for an industrial accident or occupational disease occurring on or before June 30, 1994. A payment made under this section shall be made in accordance with this chapter or Chapter 3, Utah Occupational Disease Act. The Employers' Reinsurance Fund has no liability for an industrial accident or occupational disease occurring on or after July 1, 1994.
 - (b) The Employers' Reinsurance Fund succeeds to all money previously held in the "Special Fund," the "Combined Injury Fund," or the "Second Injury Fund."
 - (c) The commissioner shall appoint an administrator of the Employers' Reinsurance Fund.
 - (d) The state treasurer shall be the custodian of the Employers' Reinsurance Fund.
 - (e) The administrator shall make provisions for and direct a distribution from the Employers' Reinsurance Fund.
 - (f) Reasonable costs of administering the Employers' Reinsurance Fund or other fees may be paid from the Employers' Reinsurance Fund.
- (2) The state treasurer shall:
 - (a) receive workers' compensation premium assessments from the State Tax Commission; and
 - (b) invest the Employers' Reinsurance Fund to ensure maximum investment return for both long and short term investments in accordance with Section 51-7-12.5.
- (3)
 - (a) The administrator may employ, retain, or appoint counsel to represent the Employers' Reinsurance Fund in a proceeding brought to enforce a claim against or on behalf of the Employers' Reinsurance Fund.
 - (b) If requested by the commission, the attorney general shall aid in representation of the Employers' Reinsurance Fund.
- (4) The liability of the state, its departments, agencies, instrumentalities, elected or appointed officials, or other duly authorized agents, with respect to payment of compensation benefits, expenses, fees, medical expenses, or disbursement properly chargeable against the Employers' Reinsurance Fund, is limited to the cash or assets in the Employers' Reinsurance Fund, and they are not otherwise, in any way, liable for the operation, debts, or obligations of the Employers' Reinsurance Fund.
- (5)
 - (a) If injury causes death within a period of 312 weeks from the date of the accident, the employer or insurance carrier shall pay:
 - (i) the burial expenses of the deceased as provided in Section 34A-2-418; and
 - (ii) benefits in the amount and to a person provided for in this Subsection (5).
 - (b)
 - (i) If there is a wholly dependent person at the time of the death, the payment by the employer or its insurance carrier shall be:
 - (A) subject to Subsections (5)(b)(i)(B) and (C), 66-2/3% of the decedent's average weekly wage at the time of the injury;
 - (B) not more than a maximum of 85% of the state average weekly wage at the time of the injury per week; and
 - (C)
 - (I) not less than a minimum of \$45 per week, plus:
 - (Aa) \$5 for a dependent spouse; and

- (Bb) \$5 for each dependent minor child under the age of 18 years, up to a maximum of four such dependent minor children; and
- (II) not exceeding:
 - (Aa) the average weekly wage of the employee at the time of the injury; and
 - (Bb) 85% of the state average weekly wage at the time of the injury per week.
- (ii) Compensation shall continue during dependency for the remainder of the period between the date of the death and the expiration of 312 weeks after the date of the injury.
- (iii)
 - (A) The payment by the employer or its insurance carrier to a wholly dependent person during dependency following the expiration of the first 312-week period described in Subsection (5)(b)(ii) shall be an amount equal to the weekly benefits paid to the wholly dependent person during the initial 312-week period, reduced by 50% of the federal Social Security death benefits the wholly dependent person:
 - (I) is eligible to receive for a week as of the first day the employee is eligible to receive a Social Security death benefit; and
 - (II) receives.
 - (B) An employer or its insurance carrier may not reduce compensation payable under this Subsection (5)(b)(iii) on or after May 5, 2008, to a wholly dependent person by an amount related to a cost-of-living increase to the Social Security death benefits that the wholly dependent person is first eligible to receive for a week, notwithstanding whether the employee is injured on or before May 4, 2008.
 - (C) For purposes of a wholly dependent person whose compensation payable is reduced under this Subsection (5)(b)(iii) on or before May 4, 2008, the reduction is limited to the amount of the reduction as of May 4, 2008.
- (iv) The issue of dependency is subject to review at the end of the initial 312-week period and annually after the initial 312-week period. If in a review it is determined that, under the facts and circumstances existing at that time, the applicant is no longer a wholly dependent person, the applicant:
 - (A) may be considered a partly dependent or nondependent person; and
 - (B) shall be paid the benefits as may be determined under Subsection (5)(d)(iii).
- (c)
 - (i) For purposes of a dependency determination, a surviving spouse of a deceased employee is conclusively presumed to be wholly dependent for a 312-week period from the date of death of the employee. This presumption does not apply after the initial 312-week period.
 - (ii)
 - (A) In determining the annual income of the surviving spouse after the initial 312-week period, there shall be excluded 50% of a federal Social Security death benefit that the surviving spouse:
 - (I) is eligible to receive for a week as of the first day the surviving spouse is eligible to receive a Social Security death benefit; and
 - (II) receives.
 - (B) An employer or its insurance carrier may not reduce compensation payable under this Subsection (5)(c)(ii) on or after May 5, 2008, to a surviving spouse by an amount related to a cost-of-living increase to the Social Security death benefits that the surviving spouse is first eligible to receive for a week, notwithstanding whether the employee is injured on or before May 4, 2008.

- (C) For purposes of a surviving spouse whose compensation payable is reduced under this Subsection (5)(c)(ii) on or before May 4, 2008, the reduction is limited to the amount of the reduction as of May 4, 2008.
- (d)
 - (i) If there is a partly dependent person at the time of the death, the payment shall be:
 - (A) subject to Subsections (5)(d)(i)(B) and (C), 66-2/3% of the decedent's average weekly wage at the time of the injury;
 - (B) not more than a maximum of 85% of the state average weekly wage at the time of the injury per week; and
 - (C) not less than a minimum of \$45 per week.
 - (ii) Compensation shall continue during dependency for the remainder of the period between the date of death and the expiration of 312 weeks after the date of injury. Compensation may not amount to more than a maximum of \$30,000.
 - (iii) The benefits provided for in this Subsection (5)(d) shall be in keeping with the circumstances and conditions of dependency existing at the date of injury, and any amount paid under this Subsection (5)(d) shall be consistent with the general provisions of this chapter and Chapter 3, Utah Occupational Disease Act.
 - (iv) Benefits to a person determined to be partly dependent under Subsection (5)(c):
 - (A) shall be determined in keeping with the circumstances and conditions of dependency existing at the time of the dependency review; and
 - (B) may be paid in an amount not exceeding the maximum weekly rate that a partly dependent person would receive if wholly dependent.
 - (v) A payment under this section shall be paid to a person during a person's dependency by the employer or its insurance carrier.
- (e)
 - (i) Subject to Subsection (5)(e)(ii), if there is a wholly dependent person and also a partly dependent person at the time of death, the benefits may be apportioned in a manner consistent with Section 34A-2-414.
 - (ii) The total benefits awarded to all parties concerned may not exceed the maximum provided for by law.
- (6) The Employers' Reinsurance Fund:
 - (a) shall be:
 - (i) used only in accordance with Subsection (1) for:
 - (A) the purpose of making a payment for an industrial accident or occupational disease occurring on or before June 30, 1994, in accordance with this section and Section 34A-2-703; and
 - (B) payment of:
 - (I) reasonable costs of administering the Employers' Reinsurance Fund; or
 - (II) fees required to be paid by the Employers' Reinsurance Fund;
 - (ii) expended according to processes that can be verified by audit; and
 - (b) may not be used for:
 - (i) administrative costs unrelated to the Employers' Reinsurance Fund; or
 - (ii) an activity of the commission other than an activity described in Subsection (6)(a).

Amended by Chapter 27, 2008 General Session
Amended by Chapter 90, 2008 General Session